



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1994

Ms. Ann Diamond  
Assistant District Attorney  
Tarrant County  
Office of the Criminal District Attorney  
Justice Center  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR94-013

Dear Ms. Diamond:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.<sup>1</sup>). Your request was assigned ID# 23759.

The Tarrant County's Criminal District Attorney's office (the "county") received an open records request for certain records relating to the internal affairs investigation of the arrest of a certain police officer. The county contends this information may be withheld from the public pursuant to the litigation exception, Open Records Act, section 552.103(a) of the Government Code (former section 3(a)(3), V.T.C.S. article 6252-17a).<sup>2</sup> The county claims that the responsive information relates to two pending lawsuits filed against the county. The county submitted the responsive information for our review.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated

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<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

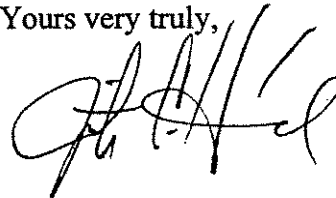
<sup>2</sup>The county lists as exceptions "confidential by Law, Law Enforcement and litigation exceptions," but cites no specific sections of the Open Records Act. In the future, this office would recommend that any exception in the act be specifically cited by number to avoid any ambiguity as to what exceptions the county is relying on to withhold the requested information.

judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.<sup>3</sup>

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) (former section 3(a)(3)) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Juanita C. Hernandez  
Special Assistant Attorney General  
Open Government Section

JCH/rho

Ref.: ID# 23759

Enclosure: Submitted documents

cc: Ms. Stefani Gammage Kopenec  
Fort Worth Star-Telegram  
P.O. Box 1870  
Fort Worth, Texas 76101  
(w/o enclosures)

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<sup>3</sup>Because section 552.103 resolves your request, it is not necessary to address the other exceptions listed by the county.